

## Office of the Secretary of Labor

## § 20.209

the date on which the request for such hearing was received. If a hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(1) The Department may not issue a withholding order until the hearing is held and a decision rendered; or

(2) If the Department had previously issued a withholding order to the debtor's employer, the Department must suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(j) *Content of decision.* The written decision shall include:

(1) A summary of the facts presented;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(k) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act, 5 U.S.C. 701-706.

(l) *Failure to appear.* In the absence of good cause shown to the hearing official, a debtor who fails to appear at a hearing scheduled pursuant to this section will be deemed as not having timely filed a request for a hearing.

### § 20.207 Wage garnishment order.

(a) Unless the Department receives information that the Department believes justifies a delay or cancellation of the withholding order, the Department shall send, by first class mail, a withholding order to the debtor's employer:

(1) Within 30 days after the debtor fails to make a timely request for a hearing (*i.e.*, within 15 business days after the mailing of the notice described in § 20.205(a), or,

(2) If a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the hearing official, or,

(3) As soon as reasonably possible thereafter.

(b) The withholding order sent to the employer under paragraph (a) of this section shall be in the form prescribed by the Secretary of the Treasury. The

withholding order shall contain the signature of, or the image of the signature of, the Secretary of Labor or his or her delegatee. The order shall contain only the information necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and Employee Identification Number, as well as instructions for withholding and information as to where payments should be sent.

(c) The Department will retain evidence of service indicating the date of mailing of the order.

### § 20.208 Certification by employer.

Along with the withholding order, the agency shall send to the employer a certification in the form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the Department within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

### § 20.209 Amounts withheld.

(a) After an employer receives a garnishment order, the employer must deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (b) of this section.

(b) Subject to the provisions in paragraphs (c) and (d) of this section, the amount of garnishment shall be the lesser of:

(1) The amount indicated on the garnishment order up to 15 percent of the debtor's disposable pay; or

(2) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(c) When a debtor's pay is subject to withholding orders with priority the following shall apply:

(1) Unless otherwise provided by Federal law, withholding orders issued under this subpart shall be paid in the amounts set forth under paragraph (b) of this section and shall have priority

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over other withholding orders which are served later in time. However, withholding orders for family support shall have priority over withholding orders issued under this subpart.

(2) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this subpart, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this subpart shall be the lesser of:

(i) The amount calculated under paragraph (b) of this section, or

(ii) An amount equal to 25 percent of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(3) If a debtor owes more than one debt to the Department, the Department may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (b) of this section.

(d) An amount greater than that set forth in paragraphs (b) and (c) of this section may be withheld upon the written consent of the debtor.

(e) The employer shall promptly pay to the Department all amounts withheld in accordance with the withholding order issued pursuant to this subpart.

(f) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(g) Any assignment or allotment by an employee of his earnings shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this subpart, except for any assignment or allotment made pursuant to a family support judgment or earlier withholding order.

(h) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the Department to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

## **29 CFR Subtitle A (7-1-16 Edition)**

### **§ 20.210 Exclusions from garnishment.**

The Department may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been re-employed continuously for at least 12 months. The debtor has the burden of informing the Department (or any other federal agency exercising the Department's authority under this subpart) of the circumstances surrounding an involuntary separation from employment.

### **§ 20.211 Financial hardship.**

(a) A debtor whose wages are subject to a wage withholding order under this subpart, may, at any time, request a review by the Department of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting a review under paragraph (a) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. The Department shall consider any information submitted in accordance with procedures and standards established by the agency.

(c) If a financial hardship is found, the Department shall downwardly and temporarily adjust the amount garnished to reflect the debtor's financial condition. The Department will notify the employer of any adjustments to the amounts to be withheld.

### **§ 20.212 Ending garnishment.**

(a) Once the Department has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the Department shall send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, the Department shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

### **§ 20.213 Actions prohibited by employer.**

An employer may not discharge, refuse to employ, or take disciplinary